

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

ORDER WQO 2003-0016

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In the Matter of the Petitions of

**AGRICULTURAL WATER QUALITY COALITION AND AGRICULTURAL  
WATERSHED COALITIONS AND SAN JOAQUIN RIVER EXCHANGE  
CONTRACTORS WATER AUTHORITY**

For Review of Conditional Waiver of Waste Discharge Requirements for Discharges From Irrigated Lands, Resolution No. R5-2003-0105; Monitoring and Reporting Program for Coalition Groups, Order No. R5-2003-0826; Rescission of Prior Conditional Waivers, Resolution No. R5-2003-0102; and for Monitoring Program Order No. R5-2003-0826

Issued by the  
California Regional Water Quality Control Board,  
Central Valley Region

*SWRCB/OCC FILES A-1586 AND A-1586(c)*

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BY THE BOARD:

The Central Valley Regional Water Quality Control Board (Regional Board) issued a conditional waiver of waste discharge requirements for discharges from irrigated lands in Resolution No. R5-2003-0105 (Waiver), on July 11, 2003. The Waiver regulates discharges of waste from irrigated lands throughout the Central Valley. The region subject to the Waiver includes more than seven million acres of cropland under irrigation and approximately 25,000 individuals and operations generating agricultural wastewater. Seven petitions were filed with the State Water Resources Control Board (State Board) challenging the various actions taken on July 11, 2003, including the Waiver, monitoring and reporting programs associated with the Waiver, and an initial study and negative declaration adopted to comply with the California Environmental Quality Act.<sup>1</sup> The Waiver allows for participation by individual farmers (Individual

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<sup>1</sup> The seven petitioners are Agricultural Water Quality Coalition and Agricultural Watershed Coalitions, California Farm Bureau Federation, California Rice Commission, San Joaquin River Exchange Contractors Water Authority, Northern California Water Association and Ducks Unlimited, Inc., Stevinson Water District, and a coalition of environmental groups. All of the petitions have been consolidated for purposes of review. (Cal. Code of Regs., tit. 23, § 2054.)

Dischargers) and by groups of farmers within watersheds (Coalition Groups). There are different reporting and monitoring requirements for the two types of participants. Two of the petitioners, Agricultural Water Quality Coalition and Agricultural Watershed Coalitions (Agricultural Coalition) and San Joaquin River Exchange Contractors Water Authority (Exchange Contractors), jointly referred to herein as Petitioners, requested a stay of one requirement in the conditional waiver. Petitioners requested a stay of the requirement in Attachment B.1.c that Coalition Groups that seek coverage under the Waiver on behalf of Individual Dischargers must, by November 1, 2003, submit a Membership Document as part of a Notice of Intent (NOI). For the reasons discussed below, the requirement for Coalition Groups to submit information on each Individual Discharger is stayed pending resolution of the petitions on their merits.

### **I. BACKGROUND**

The Waiver replaces an earlier waiver that had been in place for over 20 years. The prior waiver did not contain substantive requirements, and did not require reporting or monitoring to obtain coverage under its provisions. The current Waiver thus, for the first time, contains detailed requirements for obtaining coverage, including submitting Notices of Intent, General Reports from Coalition Groups, Watershed Evaluation Reports, Monitoring Reports and a Management Plan. The first submissions--the NOIs and General Reports--are due on November 1, 2003.

By August 11, 2003, the Petitioners all filed petitions seeking review of the Waiver and accompanying documents. Agricultural Coalition sought a stay of "the specific deliverables" in the Waiver, and Exchange Contractors stated that they incorporated by reference Agricultural Coalition's petition. On August 14, 2003, the State Board sent a letter concerning the status of all seven petitions. The letter stated that the stay request was incomplete, and informed Petitioners that the request must clearly list each requirement for which a stay was requested. Petitioners were given an opportunity to amend their stay requests. On August 21, 2003, Agricultural Coalition submitted an amended stay request, stating that the request was limited to the documents due on November 1, 2003, and that the stay was requested to delay the requirement to submit these documents until 60 days following a decision on the merits of the petitions. The affidavit submitted in support of the amended stay request was limited to the requirement for Coalition Groups "to assemble contact information for every landowner and operator by November 1, 2003."

The Exchange Contractors stated that they join in the stay request. In the Notice for the Stay Hearing in this matter, the State Board explained that the hearing would be limited to the requirement to submit a Membership Document as part of the NOI.

In order to issue a stay, the State Board must find that the Petitioners have alleged facts and produced proof of: (1) substantial harm to the Petitioners or to the public interest if a stay is not granted; (2) a lack of substantial harm to other interested persons and to the public interest if a stay is granted; and (3) substantial questions of law and fact regarding the disputed action. (Cal. Code Regs., tit. 23, § 2053.) In addition, the State Board can issue a stay of the effect of the action, after a hearing, upon its own motion. (*Id.*, at subd. (b).)

All three prongs of the test must be met before a stay is required, and all three prongs concern whether a stay should be granted during the period of time pending resolution of the petitions on their merits, and not whether the petitions should be upheld on the merits. (*County of Los Angeles, et al.*, WQO 2002-0007.)

## II. CONTENTIONS AND FINDINGS

1. Contention: Petitioners contend that they will suffer substantial harm if a stay is not granted.

Finding: The Petitioners request a limited stay, and their allegations of substantial harm are limited to the requirement to provide membership information for all participants in Coalition Groups by November 1, 2003. The information that must be provided is the name of the owner or operator, farm assessor parcels numbers, Section, Township and Range and closest downstream surface water body. In addition, the Coalition Groups must assemble, and have available upon request, phone numbers and mailing addresses for all participants.

We will not address in this Order whether it is appropriate to require the submission and collection of the above information. That is an issue that will be addressed in our decision on the merits. Rather, we question here only whether the requirement to collect and submit this information by November 1, 2003, causes substantial harm to the Petitioners.

In addressing this issue, we note that the Waiver is premised on submitting information by November 1, 2003, including NOIs containing Membership Documents and General Reports, from all dischargers who propose to be covered under the Waiver. There is not a clear provision for coming under the Waiver at a later date. Thus, if owners and operators in a

watershed wish to pursue coverage as part of a Coalition Group, they must form the group, determine all of the members, and provide all of the information by November 1. If they fail to comply with all of these steps, they have no assurance of being allowed to join a group or obtain coverage under the Waiver at a later date.<sup>2</sup>

Without deciding the merits of any petitions, some of which claim the Waiver is too lenient or others which claim it is too stringent, it is obvious that those owners and operators who join Coalition Groups, and the Regional Board staff who must administer the Waiver, may achieve significant cost savings compared to owners and operators who file as Individual Dischargers. The evidence presented in this matter supports the contention that it is not reasonable to obtain all of the detailed Membership Information from every potential Coalition Group by November 1, 2003. The evidence showed that watershed groups may include thousands of individual farmers and millions of acres of farmland. The organization of such watershed groups is an enormous task. Moreover, the regulation of farmers in this manner is a wholly new procedure not only within the Central Valley, but also within the state. The testimony that the tasks of educating farmers to join watershed groups and compiling the Membership Information cannot be done by November 1 is compelling.<sup>3</sup> We conclude that owners and operators who wish to join Coalition Groups who do not provide the Membership Information for all potential members will suffer substantial harm if the Membership Information must be submitted by November 1, 2003. We also find that the public interest is best served by having full participation in watershed groups, since such participation will result in a more effective and less costly regulatory program.

2. Contention: Petitioners contend there will not be substantial harm to interested persons and to the public interest if a stay is granted.

Finding: The stay that is requested is limited to the Membership Information for Coalition Groups. Apart from the Membership Information, the Coalition Groups must submit

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<sup>2</sup> The Chair of the Regional Board stated, in a policy statement, that it was his intention to continue to allow Coalition Groups to participate even if their submissions on November 1 are not complete. This statement, however, was not supported by any provisions in the Waiver itself.

<sup>3</sup> We are aware that some Coalition Groups did not "require" the submission of the information in their communications with potential members. Nonetheless, we are persuaded that had they done so, they could not have accomplished the task of receiving detailed information from 25,000 farmers.

detailed information of the organization of the group, a detailed map of the area, and the funding mechanisms. There is also no request to stay the submission of monitoring details or the Management Plan, which contain the substantive requirements for compliance with the Waiver. The Petitioners have shown that there will be no substantial harm to interested persons or to the public interest if details on the membership of each Coalition Group is not compiled pending resolution of the petitions, since the absence of this information will not hinder the Regional Board staff in reviewing and considering for approval the Coalition Groups and their other submittals.<sup>4</sup>

3. Contention: Petitioners contend there are substantial issues of law and fact.

Finding: The State Board will review the petitions on their merits, and we have indicated, in a letter dated June 13, 2003, that the Board intends to issue an order on the merits of the petitions. Clearly, we consider some of these issues to be significant, while we make no determination as to the merit of any of these contentions at this time.

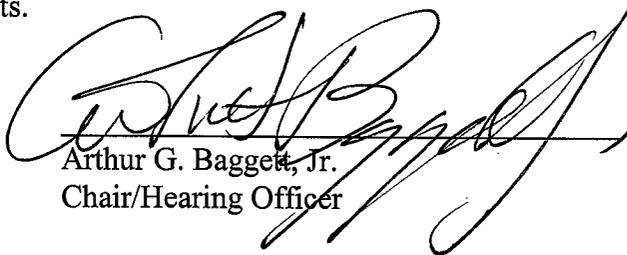
### III. SUMMARY AND CONCLUSION

The State Board finds that the Petitioners have met their burden of proving each of the three conditions required for issuance of a stay. A stay shall be granted from the requirements for Coalition Groups to provide Membership Documents and Information on individual members by November 1, 2003.

### IV. ORDER

IT IS HEREBY ORDERED that the requirements in Resolution No. R5-2003-0105 for Coalition Groups to include a Membership Document by November 1, 2003, is stayed pending resolution of the petitions on their merits.

Date: October 28, 2003.

  
Arthur G. Baggett, Jr.  
Chair/Hearing Officer

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<sup>4</sup> The testimony at the hearing was that the Regional Board staff did not, in the next few months, plan to review the details of the submittals, including the completeness of the Membership Information.